

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)
Department of Housing and Urban)
Development, on behalf of Complainant [REDACTED])
[REDACTED] and her [REDACTED] (minor child),)
)
Charging Party,)
)
)
v.)
)
Janie Kelly and Richard Cowart,)
)
Respondents)
_____)

FHEO Case Number
04-08-1144-8

CHARGE OF DISCRIMINATION

I. JURISDICTION

On or about May 27, 2008, [REDACTED] [REDACTED] (“Complainant”) filed a complaint with the United States Department of Housing and Urban Development (“HUD”). Complainant alleged that Janie Kelly, property manager of Shamrock Apartments in Vicksburg, Mississippi (“Respondent Kelly” or “Kelly”), violated the Fair Housing Act (“Act”), 42 U.S.C. §§ 3601-19, by discriminating against her and her child based on race, in violation of 42 U.S.C. § 3604(b). On July 11, 2008, the complaint was amended to name Richard Cowart (“Respondent Cowart” or “Cowart”), owner of Shamrock Apartments, as a respondent. On September 25, 2008, the complaint was amended to include additional allegations of violations of the Act based on race and include color as a basis of discrimination. Specifically, Complainant alleged violations of 42 U.S.C. § 3604(a) and (c) by Respondents. The complaint was amended once again on September 15, 2010, to remove an alleged aggrieved person. Efforts at conciliating this complaint were unsuccessful.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610(g)(1) and (2). The Secretary has delegated that authority to the General Counsel (24 C.F.R. Part 103), who has redelegated the authority to the Assistant General Counsel for Fair Housing Enforcement. 74 Fed. Reg. 62803, 62804 (Dec. 1, 2009).

The Regional Director of the Office of Fair Housing and Equal Opportunity for Region IV, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred in this case based on race and color and has authorized and directed the issuance of this Charge of Discrimination.

II. SUMMARY OF ALLEGATIONS IN SUPPORT OF THE CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause, filed herewith, Respondents Kelly and Cowart are charged with violating the Act as described below.

1. It is unlawful to refuse to rent after the making of a bona fide offer, or to refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of race and/or color. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.50(b)(3) and 24 C.F.R. § 100.60(5).

2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of race and/or color. 42 U.S.C. § 3604(b); 24 C.F.R. § 100.50(b)(2).

3. It is unlawful to make, print, or publish, or cause to be made, printed or published any notice, statement, or advertisement, with respect to the rental of a dwelling that indicates any preference, limitation, or discrimination based on race and/or color. 42 U.S.C. § 3604(c); 24 C.F.R. § 100.50(b)(4) and 24 C.F.R. § 100.75(a), (b), (c)(1) and (c)(2).

4. Complainant [REDACTED] [REDACTED] is White. She has two minor children, [REDACTED] and a [REDACTED]. Complainant is an aggrieved person as defined by the Act.

5. Complainant's [REDACTED] is biracial; [REDACTED] father is Black. [REDACTED] is five years old now. When the alleged acts of discrimination occurred, Complainant's [REDACTED] was a little under three years of age. Complainant's [REDACTED] lived with her at the time of the alleged acts and lives with her now. Complainant's [REDACTED] is an aggrieved person as defined by the Act.

6. Shamrock Apartments ("Shamrock") is an apartment complex located at [REDACTED] [REDACTED]. Shamrock had 48 units at the time Complainant resided there. Shamrock, and Complainant's apartment, are dwellings as defined by the Act.

7. Respondent Janie Kelly is the property manager of Shamrock. Respondent Kelly is the primary point of contact for persons seeking to rent an apartment at Shamrock. She is also responsible for the day to day operations of Shamrock. This includes collecting

tenant rents, managing and responding to tenant requests for repairs and other matters, and evaluating whether or not a tenant has complied with the terms of his or her lease. Respondent Kelly lives in a unit at Shamrock.

8. Respondent Richard Cowart owns Shamrock Apartments. Respondent Kelly is employed by and reports to Respondent Cowart.

9. On or about February 21, 2007, Complainant called Shamrock and spoke to Respondent Kelly about renting an apartment. Respondent Kelly informed Complainant that she had a two bedroom unit available for a monthly rent payment of \$495. During the course of this conversation, Complainant expressed interest in a six month lease and Kelly responded that this was fine.

10. Later that same day during her lunch break, Complainant visited Shamrock and met with Respondent Kelly in person. Kelly showed Complainant apartment #7 ("subject unit" or "Complainant's apartment"), a second floor unit. Complainant expressed interest in signing a six month lease for the subject unit and communicated that she had two children. Kelly agreed to the six month lease and stated that she was not going to run a credit or background check on Complainant. Instead, Kelly told Complainant to pay \$300 as a security deposit and \$495 for the first month's rent. During this conversation, Kelly also informed Complainant that she could move into the subject unit the following weekend.

11. Complainant moved into the subject unit on or about February 25, 2007. Complainant signed the lease for the subject unit on or about March 1, 2007, after Respondent Kelly brought the lease to Complainant's apartment. It was at this time that Kelly first saw Complainant's [REDACTED]. Respondent Kelly commented on Complainant's [REDACTED] being a "handful." Respondent Kelly also remarked that Complainant's [REDACTED], who is White, was "very handsome."

12. One evening, on or about April 19, 2007, Complainant received a Black male visitor in her apartment. The visitor stayed for less than two hours.

13. On or about April 20, 2007, Respondent Kelly informed Complainant that tenants at Shamrock were complaining about Complainant's visitors as well as loud noises from her apartment during night time hours. Kelly also informed Complainant that she was not permitted to have visitors who are not listed on her lease. She further told Complainant that if other issues arose after this "warning," she would evict Complainant from the subject unit.

14. On or about the early morning hours of June 23, 2007, the same Black male visitor came to Complainant's apartment. In this instance, Complainant did not expect the visitor and he knocked on Complainant's door before eventually calling her via phone to let her know he was at the door. Complainant, who had been sleeping, then let her visitor in.

15. Upon seeing a Black male knocking on Complainant's door on or about the early morning hours of June 23, 2007, one of Complainant's neighbors called the Vicksburg police. When police arrived at Complainant's apartment, they asked Complainant if she was alright. When she responded that she was, police left the apartment.

16. Respondent Kelly went to Complainant's apartment on or about June 23, 2007 and orally informed Complainant that she was evicting her. Respondent Kelly stated that she did not like the fact that police had been called to Shamrock Apartments. Kelly stated that this, in addition to the noise violations, were grounds for eviction.

17. In response to Respondent Kelly's oral communication, Complainant requested an opportunity to speak with Shamrock's owner. Kelly did not arrange for such a meeting. Instead, she stated that she would give Complainant her deposit back if she followed the clean up notice and left the subject unit.

18. Later that same day, Respondent Kelly issued Complainant a notice to vacate ("June 23 notice"), informing her that she was in violation of her lease's noise regulations and that her lease would be voided. The notice stated that Complainant had 30 days to move out of the apartment. Respondent Kelly taped the notice onto Complainant's apartment door.

19. By letter dated July 12, 2007, to Respondent Kelly, Complainant's counsel asked Kelly to "cure" the "illegal eviction, harassment and discrimination" against Complainant.

20. In correspondence dated July 20, 2007 and addressed to Complainant's counsel, Respondent Kelly reiterated that the June 23 notice was due to several noise complaints and Complainant's lack of adherence to the terms of her lease in this regard. Respondent Kelly informed the attorney that if Complainant was unwilling to vacate per the terms of the June 23 notice, she was "giving notice that [on August 31, 2007] such lease will expire and will not be renewed."

21. By letter dated August 1, 2007, to Complainant, Respondent Kelly informed Complainant that upon expiry of her lease on August 31, 2007, Shamrock Apartments would not be renewing its lease agreement with her.

22. Complainant and her [REDACTED] moved out of the subject unit on or about September 3, 2010.

23. In August of 2007, the Vicksburg police visited the home of two White tenants, a couple, at Shamrock because of a domestic dispute. Respondent Kelly did not give this couple a notice to vacate their home as a result of this disturbance or visit from law enforcement authorities. Rather, Respondent Kelly informed these tenants of her intent not to renew their lease approximately two months after police visited their home. The reason Respondent Kelly did not renew this couple's lease was because they had not paid

their full rent for the month of October. In addition, Kelly's letter to these White tenants permitted them approximately one and a half months to vacate their apartment.

24. [REDACTED], who is White, lived at Shamrock from February until May of 2007. Respondent Kelly informed [REDACTED] that the tenant who lived above her, i.e., Complainant, had a "Black and White child." Respondent Kelly instructed [REDACTED] to let her know if any "Black people" were in Complainant's apartment, so that Kelly could remove Complainant from Shamrock. Respondent Kelly also said that she did not like renting to Black people, because all they did was cause trouble, especially Black men. Kelly further stated that there are many White women who live at Shamrock Apartments and she wants them to feel safe living there.

25. [REDACTED] called Shamrock Apartments in or about January of 2007, seeking housing, and spoke to Respondent Kelly. According to [REDACTED], after speaking to Respondent Kelly for some time, Kelly ascertained that [REDACTED] was White. Kelly stated that she thought [REDACTED] was Black because of her first name. After that, Respondent Kelly amenable to renting an apartment to her. Kelly told [REDACTED] she "was trying to 'weed' out all of the Black people to make [Shamrock Apartments] a 'better place' to live." After her conversation with Respondent Kelly and because of the discriminatory statements Kelly made, [REDACTED] decided not to apply for a unit at Shamrock Apartments.

26. Respondent Kelly made discriminatory statements to other tenants, including describing Complainant's [REDACTED] as a Black and White child and discussing the presence of Blacks in the neighborhood surrounding Shamrock, wishing that it had remained all White.

27. Respondent Kelly is Respondent Cowart's employee and agent in the management of Shamrock Apartments so Cowart is liable for Kelly's discriminatory conduct.

28. By terminating Complainant's lease and residency in the subject unit, as described above, Respondents made housing unavailable to Complainant and her [REDACTED] because of race and color, in violation of the Act. 42 U.S.C. § 3604(a).

29. By terminating Complainant's lease and residency in the subject unit, as described above, Respondents discriminated against Complainant and her [REDACTED] in the terms and conditions of rental of the subject unit because of race and color, in violation of the Act. 42 U.S.C. § 3604(b).

30. As described in paragraphs 24-26 above, Respondent Kelly made discriminatory statements with respect to housing because of race and color, in violation of the Act. 42 U.S.C. § 3604(c).

31. Because of Respondents' discriminatory conduct, Complainant has suffered actual damages, including out of pocket expenses and emotional distress damages. For example, in addition to the costs related to moving, she could not locate a comparable

rental property for the same price she was paying at Shamrock and had to move into her parents' home. Respondents' conduct caused her emotional distress, including humiliation, anxiety and stress.

III. CONCLUSION

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(a), (b) and (c) and prays that an Order be issued that:

1. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, 42 U.S.C. § 3604(a), (b), and (c); and its implementing regulations;
2. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from discriminating because of race and color against any person, in violation of the Fair Housing Act;
3. Enjoins Respondents, their agents, employees, and successors, and all other persons in active concert or participation with any of them, from coercing, intimidating, threatening, or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed or aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Act;
4. Awards such damages as will fully compensate Complainant, including out of pocket expenses and damages for emotional distress, pursuant to 42 U.S.C. § 3612(g)(3); and
5. Assesses a civil penalty of \$16,000 against each Respondent for violating the Act, pursuant to 42 U.S.C. § 3612(g)(3); 24 C.F.R. § 180.671.

The Secretary of HUD further prays for additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this ____ day of September, 2010

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